

signed 6/22/06

Preparer: David S. Steward, Assistant Attorney General PH: 515-281-5351 FAX: 515-242-6072
Return to: IOWA DEPARTMENT of JUSTICE, State Capitol Complex, Des Moines, IA 50319
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28E AGREEMENT
BETWEEN the IOWA COMPREHENSIVE PETROLEUM UNDERGROUND
STORAGE TANK FUND BOARD, and the IOWA DEPARTMENT OF NATURAL
RESOURCES for FUNDING AND MANAGEMENT of the UNDERGROUND STORAGE
TANK SECTION of the IOWA DEPARTMENT OF NATURAL RESOURCES

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (hereinafter "Board"), with its Administrator's office located at 2700 Westown Parkway, Suite 320, W. Des Moines, Iowa 50266, and the Iowa Department of Natural Resources (hereinafter "DNR"), located at 502 E. 9th Street, Des Moines, IA 50319. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa, and is effective as of the date it is fully executed by all parties.

I. PURPOSE

The purpose of this Agreement is to establish the terms under which the Board will provide funding pursuant Iowa Code section 455G.6(15)"a" to the DNR's Underground Storage Tank ("UST") Section during fiscal year 2007. The Board agrees to provide the DNR with funds in an amount equivalent to the UST tank management fees collected and allocated to the Board pursuant to Iowa Code sections 455B.479 and 455G.8"3". In consideration for the receipt of Board funds, the DNR agrees to take steps necessary for the complete transfer of the Board's UST installation inspector certification program (the "Program") to the DNR by June 30, 2007. Upon the successful completion of this Agreement, it is the intention of the parties to enter into subsequent agreements providing for funding to the UST Section in an amount equivalent to the UST tank management fees collected and allocated to the Board pursuant to Iowa Code sections 455B.479 and 455G.8"3". The Parties do not intend to create a separate legal entity under this Agreement.

II. TERM

This Agreement shall begin on July 1, 2006, and terminate on June 30, 2007, unless earlier terminated in accordance with this Agreement. The Agreement may be renewed for up to two (2) additional one-year extensions by the written agreement of all parties on terms stated therein.

III. ADMINISTRATION

This Agreement shall be administered by the DNR in consultation with the Board and its Administrator. All administrative decisions concerning this Agreement shall be undertaken pursuant to the terms outlined herein.

IV. ACQUIRING AND HOLDING OF PROPERTY UNDER THIS AGREEMENT

All real and personal property used or acquired under the terms of this Agreement shall be held in the name of the DNR.

V. DNR RESPONSIBILITIES

Milestone 1: By October 1, 2006, the DNR shall:

- a. have designated all DNR staff who will be responsible for the transition of the Program to the DNR;
- b. conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST Section accomplishments since July 1, 2006, and to set UST Section priorities for the time period from October 1, 2006, to January 1, 2007.

Milestone 2: By January 2, 2007, the DNR shall:

- a. in cooperation with the Board, prepare and introduce a legislative package during the 2007 legislative session providing statutory provisions for the complete transfer of the Program to the DNR;
- b. conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST Section accomplishments since October 1, 2006, and to set UST Section priorities for the time period from January 1, 2007, to April 1, 2007.

Milestone 3: By April 1, 2007, the DNR shall:

- a. have taken full possession of, and sole responsibility for, all data and files for the Program;
- b. conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST Section accomplishments since January 1, 2007, and to set UST Section priorities for the time period from April 1, 2007, to June 30, 2007.

Milestone 4: By June 30, 2007, the DNR shall:

- a. assume full responsibility for the Program either pursuant to statute, or in the event no statutory provision is enacted, pursuant to a 28E Agreement with the Board;
- b. conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST Section accomplishments since April 1, 2007.

VI. BOARD RESPONSIBILITIES

The Board shall provide the DNR with funds, subject to contingencies stated in this section, in an amount equivalent to the UST tank management fees collected and allocated to the Board during the term of this Agreement. The Board has estimated such tank management fees to be approximately Four Hundred Thousand Dollars (\$400,000), and it shall pay this amount in quarterly installments of One Hundred Thousand Dollars (\$100,000), commencing on October 2, 2006, and thereafter on January 2, 2007, April 2, 2007, and June 29, 2007. If by June 29, 2007, the Board determines the actual amount the UST tank management fees allocated to the Board during the term of this Agreement varies from the estimated amount of \$400,000 by 10% or more, the Board shall adjust the June 29, 2007 installment accordingly to reflect the actual amount allocated to the Board. If, however, the variance between the estimated amount of UST tank management fees allocated to the Board during the term of this Agreement and the actual amount is less than 10%, the final installment shall remain unchanged.

A. Payments Contingent on Completion of Subpart (a) of Milestones 1-4.

An installment due on a milestone date shall be reduced by \$75,000 if subpart (a) of the Milestone is not met by the milestone date contained in Section V of this Agreement.

B. Payments Contingent on Completion of Subpart (b) of Milestones 1-4.

An installment due on a milestone date shall be reduced by \$25,000 if subpart (b) of the Milestone is not met by the milestone date contained in Section V of this Agreement.

C. Payment for Exceeding EPA Cleanup Goals.

In the event the DNR (1) issues 300 or more No Further Action Certificates, or (2) issues No Further Action Certificates exceeding the Iowa cleanup goal issued by the Environmental Protection Agency Region 7 by no less than 125%, whichever is less, during the term of this Agreement, the Board agrees to provide the DNR an additional One Hundred Thousand Dollars (\$100,000) to accompany the final quarterly installment on June 29, 2007. The DNR shall not assume any responsibility under this Agreement to achieve these targets; however, the Board will be responsible to provide payment under this Agreement to the DNR should the identified targets be reached.

VII. FINANCING

The Board shall pay all costs associated with the administration of this Agreement in accordance with the terms of paragraph VI of this Agreement. The DNR shall use the funds provided by the Board exclusively for the operation of the DNR's UST Section. Use of the funds for any other DNR sections or programs is not authorized by this Agreement.

VIII. AMENDMENT

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by both Parties, and filed with the Secretary of State and recorded with the Polk County Recorder.

IX. TERMINATION

A. Termination Upon Mutual Consent. This Agreement may be terminated upon the mutual written consent of the parties.

B. Termination By One Party. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations, conditions, and procedures set forth below, either party to this Agreement shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to the other party to the Agreement as a result of any of the following:

1. There are insufficient funds available to allow a party to fulfill its obligations under this Agreement;
2. A change in the law prevents or substantially impairs a party's ability to participate in this Agreement; or
3. The DNR fails to meet two consecutive Milestone requirements set forth in Section V of this Agreement.

X. NOTICES

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, or sent by mail, postage prepaid, to the other party as follows:

To the Board

Iowa UST Fund Board
2700 Westown Parkway, Suite 320,
W. Des Moines, Iowa 50266

To the DNR

Iowa Department of Natural Resources
UST Section
502 E. 9th Street
Des Moines, IA 50319